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Filing date:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91221759	
Party	Defendant Brookshire Grocery Company	
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Submission	Motion to Consolidate	
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Signature	/Paul J. Reilly/	
Date	08/04/2015	
Attachments	Hershey Canada, Inc. v. Brookshire Grocery Company - Motion on Consent to Consolidate.pdf(302573 bytes)	

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HERSHEY CANADA, INC.,	§	Opposition No. 91221756
	§	Mark: BROOKSHIRE'S
Opposer,	§ §	(Serial No: 86199664) Publication Date: January 20, 2015
vs.		
vs.	§ §	
BROOKSHIRE GROCERY COMPANY,	§	Opposition No. 91221759
	§ § §	Mark: BROOKSHIRE'S & Design
Applicant.	§ °	(Serial No: 86199666)
	§ §	Brookshire's
	§ §	Publication Date: January 27, 2015
	§ °	
	8	O N 01001767
	8	Opposition No. 91221767 Mark: BROOKSHIRE'S & Design
	% % % % % %	(Serial No: 86199662)
	§ §	
	§	Brookshire's
	§ e	Publication Date: March 3, 2015
	§ § §	
	\$ §	Opposition No. 01221762
	§	Opposition No. 91221762 Mark: BROOKSHIRE'S
	\$ \$ \$ \$	(Serial No: 86199661)
	§	Publication Date: March 3, 2015
	§	•

MOTION ON CONSENT TO CONSOLIDATE

Pursuant to Fed. R. Civ. P. 42(a) and TBMP § 511, Applicant Brookshire Grocery Company ("<u>BGC</u>" or "<u>Applicant</u>") moves, with the consent of Opposer Hershey Canada, Inc. ("<u>Hershey</u>" or "<u>Opposer</u>"), to consolidate the above-captioned Opposition proceedings into a single proceeding in the interest of judicial and pecuniary economy, and requests that the proceedings in Oppositions Nos. 91221756, 91221759, 91221762 and 91221767 be governed by

the current scheduling order in Opposition No. 91221756 from and after the date of

consolidation.

The above-referenced Oppositions all involve identical parties and common

questions of law and/or fact, including whether or not the registration of the opposed applications

will damage Opposer. Further, consolidation would save time, effort and expense for the Board

and both parties, and will not cause any prejudice or inconvenience to either party. See M.C.I.

Foods Inc. v. Bunte, 86 USPQ2d 1044, 1046 (TTAB 2008) (proceeding involved identical

parties, identical registrations and related issues); S. Industries Inc. v. Lamb-Weston Inc., 45

USPQ2d 1293, 1297 (TTAB 1997) (both proceedings involved the same mark and virtually

identical pleadings); Ritchie v. Simpson, 41 USPQ2d 1859, 1860 (TTAB 1996) (cases

consolidated despite variations in marks and goods), rev'd on other grounds, 170 F.3d 1092, 50

USPQ2d 1023 (Fed. Cir. 1999).

On behalf of Hershey, Opposer's counsel Paul C. Llewellyn, a partner of the law

firm of Kaye Scholer LLP, in an email dated August 2, 2015 consented to consolidate these

Opposition proceedings.

WHEREFORE, in view of the foregoing, Applicant respectfully requests an Order

consolidating the above-referenced Opposition proceedings, and setting the current scheduling

order in Opposition No. 91221756 as the governing scheduling order for these consolidated

proceedings.

Respectfully submitted,

BAKER BOTTS LLP

Dated: August 4, 2015

Paul J. Reilly

Elizabeth K. Stanley Tyler M. Beas 2001 Ross Avenue, Suite 600 Dallas, Texas 75201-2980 Telephone No. (214) 953-6849 Facsimile No. (214) 661-4849

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 2015, a true and correct copy of the foregoing MOTION ON CONSENT TO CONSOLIDATE was served via email and Federal Express overnight courier to:

Paul C. Llewellyn Kaye Scholer LLP 250 West 55th Street | New York, New York 10019-9710 T: (212) 836-7828 | F: (212) 836-6463 Paul.Llewellyn@kayescholer.com

Tyler M. Beas

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